

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

Civil Action No. 97-1442-DRD

v.

TROPICAL FRUIT, S.P.;

AVSHALOM LUBIN;

CESAR OTERO ACEVEDO; and

PEDRO TOLEDO GONZALEZ.

Defendants.

## DECLARATION OF ROBERTO RIVERA

I, Roberto Rivera, declare under penalty of perjury, in accordance with 28 U.S.C. § 1746 as follows:

1. I make this Declaration based upon my personal knowledge including my inspections of the Tropical Fruit farm (“Farm”), consultation with employees of the Environmental Protection Agency (“EPA”), and consultation with other employees of the Puerto Rico Department of Agriculture (“PRDA”).

2. I am presently employed as a Pesticide Inspector with the PRDA and have held this position since 1978.

3. I received a Bachelor of Science degree in Agronomy in 1978 from the University of Puerto Rico, Mayaguez Campus.

4. I have been trained as a PRDA inspector according to EPA's inspector training manual.

5. I have inspected the Farm on over 20 occasions. The first inspection of the Farm in which I was involved was approximately 1996. The most recent inspection in which I was involved was on March 12, 2004.

6. Both Federal and Puerto Rico regulations contain pesticide worker protection standards to protect the health of workers. Pesticide product labels also specify worker protection measures. Through my work with PRDA, I am familiar with these pesticide worker protection standards.

7. The Consent Decree in this action entered by this Court on October 25, 2001 contains pesticide worker protection standards to protect the health of these workers. Through my work with PRDA, including work related to this action, I am familiar with the Consent Decree's pesticide worker protection standards.

8. The Consent Decree in this action contains pesticide application standards to prevent the drift of pesticides. Through my work with PRDA, including work related to this action, I am familiar with the Consent Decree's pesticide application standards.

9. Based on my inspections, my review of documents associated with the Farm, and consultation with PRDA and EPA employees, I am familiar with the Farm's efforts to comply with the pesticide worker protection and pesticide application standards contained both in the Consent Decree in this action and in applicable Federal or Puerto Rico pesticide regulations.

**Pesticide Application**

10. The Farm has selected Mr. Rafael Ingles as the designated monitor to observe pesticide hand spray applications within the No-Spray Zones as described in the Consent Decree.

11. On September 3, 2002, I performed an inspection of the Farm.

12. During my inspection, the Farm applied pesticides manually within No-Spray Zones at the Farm.

13. During my September 3, 2002 inspection, the Farm's designated monitor, Mr. Rafael Ingles, was not present at the farm to monitor the hand spray application of pesticides within the No-Spray Zones.

**Worker Protection**

14. The Consent Decree requires the Farm to comply with Federal and Puerto Rico regulations and pesticide label requirements regarding pesticide worker protection.

15. During an inspection on February 26, 2003, I observed that the Farm had not posted and made accessible to its workers its pesticide application records. The only posted and accessible pesticide application record was four months old, from October 2002.

16. During an inspection on February 26, 2003, I observed that the Farm had not provided adequate decontamination supplies, including an eyewash, soap, single use towels, and water.


17. During an inspection on February 26, 2003, I observed that the Farm had not properly removed restricted entry interval warning signs in particular sectors of the farm within the time period prescribed by the respective pesticide labels for Malathion and Benalte.

18. During an inspection on March 12, 2004, I observed that the Farm had not

provided adequate decontamination supplies, including an operable eyewash, soap, single use towels, and sufficient water.

19. During an inspection on March 12, 2004, I spoke with Farm employees who stated that they had not received pesticide handling training.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. This declaration was executed on the 27 day of October, 2004.

A handwritten signature in black ink that reads "Roberto Rivera". The signature is written in a cursive style with a large, stylized 'R'.

Roberto Rivera  
Pesticide Inspector  
Puerto Rico Department of Agriculture